It was on a contract of agency that the plaintiffs had brought their action. That contract was indivisible and incapable of partial performance. As stated by Richardson J. in *Nind* v. *Marshall*,(6) the only safe rule to be followed in the construction of a deed is the intention of the parties to be collected from a due consideration of the whole instrument. In our judgment, there was no ambiguity in the contract of agency taken as a whole. The defendant was therefore liable irrespective of whether or not he had collected the premia from the persons to whom the policies were issued through his agency. If any authority is required for that proposition it is to be found in *Bankers and Traders Insurance Co. Ltd.* v. *Allied Insurance Services*.(7)

For the reasons we have stated we allowed the appeal, thus restoring the judgment of the learned president.

*Appeal allowed.*

Solicitors: *Shearn, Delamore & Co.; L. H. Singh & Co.*

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## *RE* KONG THAI SAWMILL (MIRI) SDN. BHD.; LING BENG SUNG v. KONG THAI SAWMILL (MIRI) SDN. BHD. & ORS. (NO. 2)

**[F.C. (Lee Hun Hoe C.J. (Borneo)) October 13, 1975]**
**[Kuching — Federal Court Civil Appeal No. 101 of 1974]**

*Practice and Procedure — Appeal — Appeal to Yang Dipertuan Agung — Application for stay of execution.*

In this case the first respondent applied for leave to appeal to the Yang Dipertuan Agung and for stay of execution.

**Held:** as no special circumstances were shown to support the application for stay of execution in this case the application for stay must be refused.

*Cases referred to:-*

(1) *Re Chi Liung & Son Ltd.; Tong Chong Fah* v. *Tong Lee Hwa & Ors.* [1968] 1 M.L.J. 97.
(2) *Griffiths* v. *Benn* 27 T.L.R. 350.
(3) *Atkins* v. *Great Western Railway Company* 11 T.L.R. 400.
(4) *Smith, Hogg & Co. Ltd.* v. *The Black Sea & Baltic General Insurance Co. Ltd.* 162 L.T. 11.
(5) *Wilson* v. *Church (No. 2)* (1879) 12 Ch. D. 454.
(6) *Metropolitan Real and General Property Trust Ltd.* v. *Slaters and Bodega Ltd.* [1941] 1 All E.R. 310.
(7) *Monk* v. *Bartram* [1891] 1 Q.B. 346.

FEDERAL COURT.

*Peter Mooney* (*Joseph Tang* with him) for the appellant.

*C. T. Wong* for the respondent.

**Lee Hun Hoe C.J. (Borneo):** Leave to appeal against the decision of the Federal Court delivered on August 4, 1975, to the Yang Dipertuan Agung and stay of execution in respect of the first two orders were granted to second and third respondents soon after the delivery of judgment. The first respondent, the Kong Thai Sawmill (Miri) Sdn. Bhd. now applies for leave to appeal to the Yang Dipertuan Agung and for stay of execution in respect of three further orders. Leave to appeal has not been opposed.

Several grounds were put forward for stay of execution. It was said that the appointment of "watchdog director" was inconsistent with and in contravention of the Articles of Association of the company. The case of *Re Chi Liung & Son Ltd., Tong Chong Fah* v. *Tong Lee Hwa & Ors.*(1) was cited. There because of a pending probate action the court was prepared to maintain the *status quo* till the determination of that action. In the present case the situation is entirely different. Another ground was that two of the persons named as alternate "watchdog directors" were not parties to the action and that this would be unfair to the other shareholders. It was further said that the company was, therefore, unnecessarily burdened with pecuniary burden in the form of fees to directors.

The application for stay was strenuously opposed. It was submitted that apart from various reasons for the appointment of "watchdog directors" such appointment was not only in the interest of appellant but also other shareholders. It was further submitted that the Federal Court made the various orders after detailed argument on law and facts and that I should not disturb the orders. Whether the Federal Court is right or not is a matter for the Privy Council. There is an affidavit by appellant in reply to one by Datuk Ting Lik Hung, a director of the company.

In *Griffiths* v. *Benn*(2) the Master of the Rolls indicated that: —

"... where, after a full hearing, a definite conclusion was arrived at by the Court of Appeal, it was not fair on a successful litigant to hamper him with any such undertaking and it would need most exceptional circumstances to induce this court to accede to such an application."

In *Atkins* v. *The Great Western Railway Company*(3) where in support of an application for stay of execution pending appeal it was alleged that a great deal of prejudice had been imported into the case at the trial and that there were strong grounds for the appeal, the court held that the grounds were not sufficient to grant the application. The Master of the Rolls said that he would not undertake to say that the Court of Appeal would never listen to what happened at the trial in order to see whether they would grant a stay of execution. However, he observed that as a general rule, the only ground for such a stay was an affidavit showing that if the damages and costs were paid there was reasonable probability of getting them back even if the appeal succeeded. He would not say that the court would not interfere for some other reason, but that there were strong grounds for appeal was no reason for no one ought to appeal without strong grounds for doing so.

Again in *Smith, Hogg & Co. Ltd.* v. *The Black Sea & Baltic General Insurance Co. Ltd.*(4) where in dismissing a motion for stay of execution of the order of the Court of Appeal for assessment of damages pending an appeal to the House of Lords, Scott L.J. said: —

"The Court of Appeal has had to consider this question some time ago and decided that the practice on appeals to the House of Lords was that stay of execution, pending such an appeal, would not be granted save under very exceptional circumstances, such as for instance, where execution would destroy the subject-matter of the action or deprive the appel-

lant of the means of prosecuting the appeal. In our view the appellant's motion is not consistent with the practice on which this court, after consideration, has determined."

*Halsbury's* Laws of England, 3rd Edition, Volume 16 at page 35 states: —

"The court has an absolute and unfettered discretion as to the granting or refusing a stay, and as to the terms upon which it will grant it, and will, as a rule, only grant it if there are special circumstances, which must be deposed to on affidavit unless the application is made at the hearing."

An appeal which would be nugatory if stay was refused by reason of the poverty of the respondent would be an example of special circumstances. See *Wilson* v. *Church (No. 2)*.[5] Another example is that payment of a judgment debt would destroy the substratum of the appeal: *Metropolitan Real and General Property Trust, Ltd.* v. *Slaters and Bodega Ltd.*[6] However, an allegation on an appeal that there has been misdirection at the trial would not be sufficient to bring it within the special circumstances: *Monk* v. *Bartram*.[7]

I agree with Mr. Mooney that there is nothing in Datuk Ting Lik Hung's affidavit to indicate any reason for granting stay of execution. Mr. C. T. Wong said that by bringing appellant in as a "watchdog director" would bring the parties into conflict in the Board room. After all, there are other directors to see that meetings are conducted with decorum and dignity. The appellant was made a "watchdog director" as from August 4, 1975 and he should concern himself with matters arising thereafter and not with what had happened previously and dealt with by the court. He is put there not to cause obstruction to the running of the company. He can oppose but I do not think he can prevent the normal despatch of business. For Article 86 of the Articles of Association clearly makes clear that "questions arising at any meeting shall be decided by a majority of votes of the directors present, each director having one vote."

It is my view that where stay of execution has previously been refused by this court after a hearing of an appeal lasting over a week, an application made to the same court for stay pending an appeal must be supported by special circumstances. Allegations that there has been misdirections that the verdict of judgment was against the weight of evidence, or that there was no evidence to support the verdict or judgment, are not special circumstances on which the court will grant the application. See *Monk* v. *Bartram*.[7] Those are matters to be decided in the proper forum.

Leave to appeal to the Yang Dipertuan Agung on the same terms as were granted to second and third respondents previously will be granted. The six months period is to be calculated as from August 4, 1975. For reasons given, stay of execution of the orders is refused. Costs to be cost in the cause.

*Stay of execution refused.*

Solicitors: *Tang & Co.; Yong & Wong.*

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## V. MANUEL v. OMAR BIN HAJI AHMAD & ORS.

**[F.C. (Suffian L.P., Wan Suleiman F.J. and Chang Min Tat J.) October 30, 1975]**

**[Kuala Lumpur — Federal Court Civil Appeal No. 164 of 1974]**

*Practice and Procedure — Interpleader summons — Money and title deeds held by advocate and solicitor — Claim for money to be released — Claim for costs by way of lien — R.S.C. 1957, O.54 r.4F.*

*Practice and Procedure — Costs — Claim for by way of lien.*

The appellant, an advocate and solicitor, had received a sum of money and certain title deeds and as there were various claims to them, he took out an interpleader summons. One PL. Chidambaram Chettiar applied for the release of the money to him. The appellant said he had no claims to the money other than for taxed costs. The application of PL. Chidambaram Chettiar was allowed. The appellant appealed to the Federal Court.

**Held,** dismissing the appeal: in the circumstances of this case, the appellant had not made out a case for a prior claim to costs by way of lien.

*Case referred to:-*

(1) *Angus* v. *Wootton* (1837) 3 M. & W. 310.

FEDERAL COURT.

*G. T. Rajan* (*V. Manuel* and *P. G. Segram* with him) for the appellant.

*Morris Edgar* for the respondents.

**Chang Min Tat J.:** This is an appeal from the decision of Abdul Hamid J. given on October 28, 1974 on a summons in chambers made *ex parte* by the respondent PL. Chidambaram Chettiar acceding to the application for the sum of $14,264.70 deposited by the appellant into court to be released to him as claimant. Though made *ex parte*, the appellant made himself available both in chambers and in open court on adjournment thereto and he was at all times heard.

The sum of $14,264.70, the subject-matter of the application was said to be part of the sum of $27,800 paid to the defendant as far back as May 15, 1970. It represented the balance of the proceeds of sale of land held under Certificate of Title No. 10,003 in Jalan Pantai Bahru, in the State of Selangor, registered in the name of Haji Ahmad bin Haji Abdullah, now deceased, of whose estate Omar bin Haji Ahmad was the administrator *de bonis non*. It was alleged that together with the sum of $27,800 were deposited also 6 title deeds.

On January 3, 1973, this Omar bin Haji Ahmad, as such administrator and Harun bin Haji Yunus, as administrator of the estate of Aishah binti Haji Abdullah caused a writ to be issued against the appellant for the release of the sum of $27,800 and the six title deeds.

Almost immediately after the service of the writ on him, the appellant filed an application by way of summons in chambers for interpleader relief. He cited 4 claimants. The first was the same Omar bin Haji Ahmad but as administrator of the estate of Haji Saleha binti Haji Mohamed Din. The others were W. E. Perera, PL. Chidambaram Chettiar and Oon Seng Teong. The appellant in the summons called on the various claimants to appear and state the nature and particulars of their claims to (1) the sums